

SEP 17 2009

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
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		10/816,619	2004-04-02
		First Named Inventor	
		Gregory J. Boss	
		Art Unit	Examiner
		2195	Truong, Camquy
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. <u>53,352</u> Registration number</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p>		<p><u>/DUANE N. MOORE/</u> Signature</p> <p><u>Duane N. Moore</u> Typed or printed name</p> <p><u>202-331-8777</u> Telephone number</p> <p><u>2009-09-17</u> Date</p>	
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</p>			
<p><input checked="" type="checkbox"/> Total of <u>1</u> forms are submitted.</p>			

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Boss et. al Confirmation No: 1056  
Serial No. : 10/816,619 Examiner: Camquy Truong  
Filed : April 2, 2004 Group Art Unit: 2195  
Title : System, Method, and Service for Efficient Allocation of  
Computing Resources Among Users

**ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Pre-Appeal Brief Request is being submitted together with a Notice of Appeal and is in response to the Office Action mailed June 18, 2009, setting a three-month statutory period for response. Therefore, this Request is timely filed.

Claims 1, 3-7, 10-15, 18-27, and 29-36 stand rejected under 35 USC §101. Claims 1, 3-7, 10-11, 21-27, 29-32, and 35-36 stand rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over U.S. Patent Publication No. 2002/0165892 to Grumann et al. (hereinafter referred to as "Grumann") in view of U.S. Patent No. 6,966,033 to Gasser et al. (hereinafter referred to as "Gasser") and U.S. Patent No. 5,247,687 to Eilert et al. (hereinafter referred to as "Eilert"). Claim 12 stands rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over U.S. Patent Publication No. 2004/0117476 to Steele et al. (hereinafter referred to as "Steele") in view of Gasser. Claims 13-15, 18-20, and 33-34 stand rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Steele in view of Gasser and Eilert. Applicants respectfully traverse these rejections based on the following discussion.

Applicants respectfully traverse these rejections because the rejections contain two clear errors. First, the art of record misses the claim element of applying "a plurality of metrics including a job description and job level of a user to filter the collected

performance data". Secondly, the art of record misses the claim element of "correlating the first set of metrics and the second set of metrics with a user's job description and job level". These clear errors will be discussed separately below in sections A and B, respectively.

**A. Missing Claim Element – applying a plurality of metrics including a job description and job level of a user to filter the collected performance data.**

Independent claims 1 and 21 recite applying "a plurality of metrics including a job description and job level of a user to filter the collected performance data". Independent claims 1 and 21 stand rejected based on Grumann in view of Gasser and Eilert.

The Office Action states that "Grumann does not explicitly teach applying a plurality of metrics including a job description and job level of a user" (Office Action, p. 4, item 5). However, the Office Action cites Gasser to argue that such features are taught by the art of record (Office Action, p. 4, item 5).

More specifically, the Office Action asserts that the "task categories" of Gasser teach the "job descriptions ... of a user" of the claimed invention (Advisory Action, p. 2). Applicants traverse the rejections and submit that the "task categories" of Gasser do not teach the "job descriptions ... of a user" of the claimed invention; and, the "task categories" of Gasser are not utilized to filter performance data.

The "task categories" of Gasser do not provide a description of a user's job. Instead, Gasser's "task categories" describe different functions or operations that can be performed by computer resources, for example, data protection tasks, monitoring tasks, and storage location tasks (Gasser, col. 15, lines 11 - 32). In other words, Gasser's "task categories" provide a description of the tasks to be carried out by a computer system, and do not provide a description of the job of a person using the computer system.

Furthermore, the "task categories" of Gasser are not utilized to filter performance data. Instead, the "task categories" of Gasser are utilized to group "resource tasks" (i.e., functions or operations that can be performed by computer resources) by categories, for example, data protection tasks, monitoring tasks, and storage location tasks.

Again, Applicants submit that nothing within Gasser discloses filtering performance data based on a job description of a user as defined in independent claims 1 and 21. By stark contrast, Gasser filters "computer resources" based on "performance data". For example, as described in col. 30, lines 7 - 10 of Gasser, the user filters data storage systems (i.e., an exemplary computer resource) displayed on a user interface to only display those data storage systems that have a low performance rating, or that have less than 20 Gigabytes of disk space remaining.

In addition, the Advisory Action mailed on September 11, 2009 argues that Grumman teaches the job level of the user (Advisory Action, p. 2). Specifically, the Advisory Action argues that Grumann teaches that a user selects a specific performance task from the performance task menu, which results in the production of resource information that indicates performance levels (Advisory Action, p. 2 (citing Grumann col. 29, line 65 - col. 30, line 5)).

Applicants respectfully disagree and submit that nothing within the art of record, including the cited portions of Grumann, mentions the "job level of a user" (independent claims 1 and 21). First of all, Grumann's step of selecting a task from a menu is unrelated to the job level of the user. The task or tasks are displayed to and selected by the user, regardless of the user's job level. Moreover, the resource information and performance levels are unrelated to the user's job level. The user's job level has no impact on the production of the resource information and performance levels.

Furthermore, Applicants submit that nothing within Eilert mentions the job description or job level of a user. The Office Action does not assert that Eilert teaches applying "a plurality of metrics including a job description and job level of a user to filter the collected performance data" as recited in independent claims 1 and 21. Instead, Eilert is only cited by the Office Action for the mere purpose of allegedly illustrating performance data including a time percentage in which a computing resource is engaged in excessive paging activity (Office Action, p. 5, item 7).

Accordingly, Applicants submit that the art of record fails to teach filtering performance data based on the job description or job level of a user. Instead, Gasser filters "computer resources" based on "performance data" (e.g., filtering data storage

systems based on disk space). Nothing within Gasser, including the portions cited by the Office Action, mentions the "job level of a user". Moreover, Gasser's "task categories" (which the Office Action asserts teaches the "job description" of the claimed invention) describe tasks to be carried out by a computer system, and do not describe the job of a person using the computer system. Therefore, it is Applicants' position that the art of record misses the claimed element of applying "a plurality of metrics including a job description and job level of a user to filter the collected performance data" as defined in independent claims 1 and 21.

**B. Missing Claim Element – correlating the first set of metrics and the second set of metrics with a user's job description and job level.**

Independent claim 12 recites "correlating the first set of metrics and the second set of metrics with a user's job description and job level". Independent claim 12 stands rejected based on Steele in view of Gasser. The Office Action states that "Steele does not explicitly teach correlating the metrics with a user's job description and job level" (Office Action, p. 9, item 19). However, the Office Action cites Gasser to argue that such features are taught by the art of record (Office Action, p. 9, item 19).

Nothing within the art of record, including the portions of Gasser cited by the Office Action, mentions the "job level of a user". The portion of Gasser cited by the Office Action describes a system management operation (e.g., reset or group of devices within a system) that is classified as "high-level"; however, the cited portion of Gasser is totally unrelated to the "job level of a user". Gasser's "task categories" (which the Office Action asserts teaches the "job description" of the claimed invention) describe tasks to be carried out by a computer system, and do not describe the job of a person using the computer system. Therefore, it is Applicants' position that the art of record misses the claim element of "correlating the first set of metrics and the second set of metrics with a user's job description and job level" as defined in independent claim 12.

[SIGNATURE PAGE FOLLOWS]

Respectfully Submitted,

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